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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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Attorneys for Indirect Purchaser Plaintiffs Christopher
Johnson, Dennis McDavid, Sally O'Donaghue, Murray
Miller and Andrew Crosby, on behalf of themselves and
others similarly situated

[Additional Attorneys Appear on Signature Page]

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**IN RE OPTICAL DISK DRIVE
ANTITRUST LITIGATION**

**Case No. M:10-cv-02143 VRW
MDL No. 2143**

CLASS ACTION

This Relates To:

**ALL INDIRECT PURCHASER
ACTIONS**

**THE LARSON GROUP'S
PROPOSAL FOR
APPOINTMENT OF INTERIM
CLASS COUNSEL AND
ATTORNEYS' FEES FOR THE
INDIRECT PURCHASER
CASES**

FILED UNDER SEAL

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1 **I. INTRODUCTION**

2 Eighteen Indirect Purchaser Plaintiffs, represented by the undersigned 14 law firms,
 3 move for the Court to adopt an interim leadership committee for the Indirect Purchaser Cases,
 4 pursuant to Rule 23(g)(3) of the Federal Rules of Civil Procedure. The proposed committee,
 5 identified in this pleading as “the Larson Group” is comprised of six law firms: Girardi | Keese;
 6 Girard Gibbs LLP; Goldman Scarlato & Karon, PC; Browne Woods George LLP; Minami
 7 Tamaki LLP and Shapiro Haber Urmy LLP. Stephen G. Larson of Girardi | Keese is designated
 8 as the proposed Chair of the committee. Daniel C. Girard of Girard Gibbs LLP, is designated
 9 as the proposed Discovery Coordinator for the plaintiffs in the Indirect Purchaser Cases.

10 By Order dated May 7, 2010 (Dkt. No. 33), the Court directed that firms seeking
 11 appointment as interim lead counsel for the Indirect Purchaser Cases supplement their filings
 12 with an attorneys’ fee proposal to assist the Court in evaluating each leadership motion.
 13 Pursuant to that Order, the undersigned firms submit the fee proposal set forth below in support
 14 of the Larson Group’s leadership motion. This fee proposal considers the risks and expense of
 15 litigation against multiple defendants, many of whom are headquartered in Asia. The proposal
 16 is presented in a sliding scale format. Proposed fee percentages correspond to potential levels
 17 of a common fund recovery at one of four stages in the litigation: (1) from commencement of
 18 litigation through resolution of motions to dismiss; (2) from resolution of motions to dismiss
 19 through class certification (including Rule 23(f) appeals); (3) from class certification through
 20 the start of trial; and (4) from the start of trial through resolution of appeals. As explained
 21 below, this structure ensures adequate representation and the maximum potential recovery for
 22 the Indirect Purchaser Plaintiff Class at all key points in the litigation. *See, e.g., In re Quintus*
 23 *Sec. Litig.*, 148 F. Supp.2d 967, 970-72 (N.D. Cal. 2001).

24 **II. THE LARSON GROUP IS QUALIFIED TO SERVE AS CLASS COUNSEL FOR**
 25 **THE INDIRECT PURCHASER CASES**

26 Rule 23 requires that the Court “must appoint the applicant best able to represent the
 27 interest of the class.” Fed. R. Civ. P. 23(g)(2). Rule 23 also sets forth the factors the Court
 28 should consider in making its appointment. These factors include “counsel’s experience in

1 handling class actions, other complex litigation, and the types of claims asserted in the action”
 2 as well as “counsel’s knowledge of the applicable law.” Fed. R. Civ. P. 23(g)(1)(A)(ii) and
 3 (iii).

4 The current proposed leadership structure is similar to the structure set forth in the
 5 Proposed Leadership Order lodged with the Court on April 30, 2010, with two modifications.
 6 As in the prior submission, the current proposal includes Stephen G. Larson of Girardi | Keese
 7 as the proposed chair of the committee. Mr. Larson’s firm filed the first Indirect Purchaser
 8 case, *Johnson v. Sony*, Case No. 10-cv-507, on February 4, 2010. Mr. Larson’s cooperative
 9 efforts to manage the litigation since this initial filing are detailed in the Declaration of Stephen
 10 G. Larson filed on April 30, 2010 (Dkt. No. 17-1). His selection as Chair of the proposed
 11 committee enjoys broad support from the substantial majority of counsel in the Indirect
 12 Purchaser Cases.

13 In accordance with the Court’s May 7, 2010 Order and to further the Court’s goal of
 14 making discovery “less costly and burdensome” (*see* Dkt. No. 33, ¶ 14), the undersigned firms
 15 have selected Daniel C. Girard to serve as the Discovery Coordinator for the Indirect Purchaser
 16 Cases. Mr. Girard has practiced exclusively since 1987 in the areas of class action and complex
 17 litigation in cases involving securities, antitrust, corporate governance, partnership, civil rights
 18 and telecommunications. *See* Declaration of Daniel C. Girard filed April 30, 2010 (Dkt. No.
 19 17-3) (“Girard Decl.”), ¶ 3. Mr. Girard has prior experience managing discovery in complex
 20 litigation and efficiently managing electronic discovery. *See id.*, ¶ 4. The Larson Group will
 21 utilize Mr. Girard’s expertise to develop an effective discovery plan and coordinate discovery
 22 with the Discovery Coordinator for the Direct Purchaser Cases (*see* Dkt. No. 33, ¶ 14) to avoid
 23 duplication, reduce discovery-related expenses and improve the potential recovery for the
 24 Indirect Purchaser Plaintiff Class.

25 The other firms that comprise the proposed Interim Leadership Committee are:
 26 Goldman Scarloto & Karon, PC (Cleveland, OH); Minami Tamaki LLP (San Francisco, CA);
 27 Brown Woods George LLP (New York City, NY and Los Angeles, CA); and Shapiro Haber &
 28 Urmy (Boston, MA). All of these firms present relevant antitrust and complex litigation

1 experience, as well as geographic diversity. These are important considerations in indirect
 2 purchaser antitrust matters, such as this one, that assert claims on behalf of consumers under the
 3 antitrust laws of various states. Additionally, some firms, most notably Minami Tamaki LLP,
 4 have in-house capacity to read, speak and translate Asian languages, allowing for internal
 5 review of foreign language documents which may help to limit the need to incur translation
 6 expenses.

7 The qualifications and leadership experience of each of the firms included on the
 8 committee proposed by the Larson Group are described in materials collected and filed with the
 9 Majority Indirect Purchaser Plaintiffs' Response to Zelle Hofmann's Statement of Certain
 10 Indirect Purchaser Plaintiffs' Counsel Re: Appointment of Interim Class Counsel (Dkt. No. 17),
 11 and are incorporated by reference herein. As those materials reflect, the members of the Larson
 12 Group benefit not only from substantial experience prosecuting indirect purchaser antitrust
 13 actions such as the present action, but also from extensive experience conducting antitrust trials.

14 The proposed leadership structure no longer includes Hagens Berman Sobel Shapiro
 15 LLP. The Larson Group has been advised that the Hagens Berman firm intends to submit its
 16 own Rule 23(g) motion and attorneys' fee proposal. *See* Supplemental Declaration of Stephen
 17 G. Larson ("Supp. Larson Decl."), ¶ 3.

18 **III. THE LARSON GROUP'S ATTORNEYS' FEE AND EXPENSE PROPOSAL**

19 In preparing the fee proposal set forth below, the undersigned counsel have not
 20 communicated with any other counsel for plaintiffs or defendants in these cases as to the
 21 substance or form of the proposal and have not had any discussions with other counsel for
 22 plaintiffs with respect to potential future work on the Indirect Purchaser Cases. *See* Supp.
 23 Larson Decl., ¶ 3.

24 The undersigned submit the following proposal for recovery of attorneys' fees and
 25 litigation expenses from a common fund recovery. The proposed fee percentages and expense
 26 limits, set forth in a sliding scale format below, correspond to potential levels of a common
 27 fund recovery achieved during one of four stages in the litigation: (1) from commencement of
 28 litigation through resolution of motions to dismiss; (2) from resolution of motions to dismiss

through class certification (including Rule 23(f) appeals); (3) from class certification through the start of trial; and (4) from the start of trial through resolution of appeals.

The Larson Group's fee and expense proposal is appears below:

TOTAL NET RECOVERY	STAGE I Commencement of litigation through resolution of motions to dismiss.	STAGE II From resolution of motions to dismiss through the class certification (including Rule 23(f) appeals).	STAGE III From class certification through the start of trial.	STAGE IV From the start of trial through resolution of appeals.
TIER I: \$0 to \$75,000,000	15% of recovery	20% of recovery	22.5% of recovery	25% of recovery
TIER II: \$75,000,001 to \$150,000,000	Plus 12.5% of any amount in this range	Plus 17.5% of any amount in this range	Plus 20% of any amount in this range	Plus 22.5% of any amount in this range
TIER III: \$150,000,001 to \$300,000,000	Plus 10% of any amount in this range	Plus 15% of any amount in this range	Plus 17.5% of any amount in this range	Plus 20% of any amount in this range
TIER IV: Over \$300,000,000	Plus 7.5% of any amount in this range	Plus 12.5% of any amount in this range	Plus 15% of any amount in this range	Plus 17.5% of any amount in this range
Expense Cap:	\$500,000	\$4,000,000	\$8,000,000	\$12,000,000

1 The Larson Group proposes to cap its attorneys' fees at a multiplier of 2.5 times their
 2 lodestar. Thus, if the percentage award under the grid yields a multiplier of more than 2.5
 3 times counsel's lodestar, then the application for attorneys' fees would be reduced by the
 4 difference.

5 In addition to the fee proposal set forth above, the Larson Group proposes to cap its
 6 recoverable litigation expenses at the amounts described above, based upon the stage in which
 7 the litigation is resolved. Any litigation expenses within the cap shall be paid in addition to any
 8 attorneys' fee award. Any litigation expenses in excess of the stated caps will be the
 9 responsibility of counsel and will not be charged to the class.¹ Expenses in antitrust litigation
 10 of this nature are substantial and are extremely difficult to budget, particularly at this early
 11 stage in the litigation. The Larson Group's proposal recognizes that expenses, including expert
 12 fees and translation costs, will range substantially depending upon the stage in which the
 13 litigation is resolved. The undersigned anticipate, based on past antitrust litigation experience,
 14 that expenses could well exceed the stated caps.
 15

16 In making this fee proposal, the Larson Group has considered, among other things,
 17 counsel's evaluation of the claims and defenses likely to be asserted in this litigation, counsel's
 18 analysis of the optical disk drive market, the value of any potential recovery to the Indirect
 19 Purchaser Plaintiff class, potential procedural developments in the case (including the
 20 procurement of guilty pleas and/or cooperation by individual Defendants), the expense of
 21 litigation involving foreign Defendants, and the risks of prosecuting these complex antitrust
 22 cases on behalf of multi-state classes of Indirect Purchaser Plaintiffs. Specifically, to develop
 23 the attorneys' fee percentages and expense caps set forth above, the Larson Group analyzed
 24 publicly-available data regarding the worldwide market for optical drives, extrapolated from
 25 this data an estimated market for the U.S. markets in which the indirect purchasers are located,
 26

27 ¹ Unlike the bidding structure set forth in *Wenderhold v. Cylink Corporation*, 189 F.R.D. 570, 573
 28 (N.D. Cal. 1999), this Court's May 7, 2010 Order calling for supplemental briefing "regarding
 attorneys' fees proposals from indirect plaintiffs' counsel," did not direct counsel's percentage-
 based fee proposals to include litigation expenses.

1 and estimated potential recoveries using assumptions regarding overcharge ranges consistent
 2 with amounts known to counsel who have prosecuted antitrust actions similar to this one. The
 3 attorneys' fee percentages and expense caps reflect both the relative efforts of counsel likely to
 4 be expended at various stages of the litigation.

5 The Larson Group believes this bid, in which the fee is based on a declining percentage-
 6 of-recovery and expenses are capped at each stage of the litigation, addresses the concerns
 7 articulated by several courts, including this Court in *In re Oracle Securities Litigation* and
 8 Judge Lewis Kaplan of the Southern District of New York in *In re Auction Houses Antitrust*
 9 *Litigation*. The bid endeavors to align the interests of Indirect Purchaser Plaintiffs and their
 10 counsel, encourages counsel to work efficiently to produce the maximum monetary recovery
 11 for the class, recognizes that recovery reflects attorney effort in addition to other factors, and
 12 guards against any incentive for a premature, cheap settlement.

13 In addition, counsel note that this proposal concerns fees and expenses to be paid from
 14 any common fund created for the benefit of the class. Counsel reserve the right to seek an
 15 award of fees and expenses to be paid by Defendants, subject to negotiation or court approval,
 16 under applicable fee-shifting statutes.

17 The undersigned counsel respectfully request that the terms of the fee proposal set forth
 18 below remain confidential during the pendency of the litigation (as was done by Judge Kaplan
 19 in the *In re Auction Houses Antitrust Litigation* case), to avoid the potential for the fee proposal
 20 to have an impact on the prosecution or defense of the litigation. The potential for prejudice to
 21 the Indirect Purchaser Plaintiffs by disclosure of this fee and expense proposal is especially
 22 significant, here, because neither the Direct Purchaser Plaintiffs nor the Defendants will be
 23 required to disclose similar information.

24 **IV. THE LARSON GROUP'S PROPOSED MECHANISMS TO REDUCE** 25 **LITIGATION EXPENSES**

26 In making this fee proposal, the Larson Group has considered the types of litigation
 27 expenses, including discovery-related costs, typically associated with complex, multi-district
 28 litigation. This case will involve discovery from a number of corporate entities, 12 of which are

1 headquartered in foreign countries, and documentary evidence that may have been created or
2 maintained in languages other than English and in multiple electronic formats. These factors
3 present challenges – and the added expense – associated with retrieving, reviewing, archiving
4 and translating foreign-language documents, and with deposing key witnesses, many of whom
5 are likely to be overseas.

6 The parties have not engaged in a Rule 26(f) conference, and counsel for the Indirect
7 Purchaser Plaintiff Cases are unaware of the potential volume of discovery, the location or
8 accessibility of documentary evidence, or the identities of key witnesses. These uncertainties
9 and the early stage of the litigation have factored in to the fee and expense proposal set forth
10 above by the Larson Group.

11 The Larson Group will employ effective and efficient use of resources. To avoid
12 duplication, minimize discovery expenses, and maximize the potential recovery for the Indirect
13 Purchaser Plaintiff Class, the Larson Group proposes that the Court require that all parties sign
14 on to a single protective order and electronic discovery protocol. The Larson Group also
15 proposes that the Court require all parties to utilize a single document depository and a unified
16 document identification system. The Larson Group proposes that the parties adopt translation
17 procedures designed to produce a single translation of foreign-language documents for use by
18 all parties to the litigation.

19 Additionally, the Larson Group proposes that the Court modify its May 7, 2010 Order to
20 require the Discovery Coordinators for Plaintiffs in the Direct and Indirect Purchaser Cases to
21 work together on a joint discovery plan that will address, among other things, a common
22 deposition protocol, require depositions to be conducted jointly in both cases (when applicable),
23 and require joint document requests, interrogatories and admissions with respect to issues
24 common to both cases.

25 Finally, the Larson Group will utilize its Chair to monitor the time and expenses of
26 counsel involved in the litigation. The Chair will require that all counsel who work on this case
27 submit monthly time and expense reports, setting forth in detail any time spent or expenses
28 incurred in the litigation. The required level of detail will enable the Chair to make sure that

1 only assigned work is being performed, and that assignments are being staffed at the
2 appropriate level.

3
4 DATED: May 13, 2009

Respectfully submitted,

5 GIRARDI | KEESE

6
7 BY: _____/s/ Stephen G. Larson

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